STATE OF CALIFORNIA EDMUND G. BROWN JR., *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

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Alternate to Agenda ID#15996
Ratesetting

TO PARTIES OF RECORD IN RULEMAKING 13-09-011:

Enclosed are the proposed decision of Administrative Law Judge (ALJ) Hymes and ALJ Atamturk previously designated as the presiding officer in this proceeding and the alternate proposed decision of Commissioner Guzman Aceves. The proposed decision and the alternate proposed decision will not appear on the Commission's agenda sooner than 30 days from the date they are mailed.

Pub. Util. Code § 311(e) requires that the alternate item be accompanied by a digest that clearly explains the substantive revisions to the proposed decision. The digest of the alternate proposed decision is attached.

This matter was categorized as ratesetting and is subject to Pub. Util. Code § 1701.3(c). Upon the request of any Commissioner, a Ratesetting Deliberative Meeting (RDM) may be held. If that occurs, the Commission will prepare and publish an agenda for the RDM 10 days beforehand. When an RDM is held, there is a related ex parte communications prohibition period. (*See* Rule 8.3(c)(4).)

When the Commission acts on these agenda items, it may adopt all or part of the decision as written, amend or modify them, or set them aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision and alternate proposed decision as provided in Pub. Util. Code §§ 311(d) and 311(e) and in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at www.cpuc.ca.gov. Pursuant to Rule 14.3, opening comments shall not exceed 15 pages.

Comments must be filed pursuant to Rule 1.13 either electronically or in hard copy. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ Hymes at khy@cpuc.ca.gov and Commissioner Guzman Aceves' advisor Candace Morey at cjm@cpuc.ca.gov. The current service list for this proceeding is available on the Commission's website at www.cpuc.ca.gov.

/s/ ANNE E. SIMON
Anne E. Simon,
Acting Chief Administrative Law Judge

AES:avs

Attachment

ATTACHMENT

Digest of Differences Between the Proposed Decision of ALJ Hymes and ALJ Atamturk and the Alternate Proposed Decision of Commissioner Guzman Aceves

Pursuant to Public Utilities Code Section 311(e), this is the digest of the substantive differences between the proposed decision of Administrative Law Judges (ALJs) Hymes and Atamturk mailed on September 15, 2017 and the proposed alternate decision of Commissioner Guzman Aceves also mailed on September 15, 2017.

The ALJs' Proposed Decision (PD) declines to approve an additional auction for the Demand Response Auction Mechanism pilot (Pilot) to be held in the spring of 2018 for deliveries in 2019.

The alternate proposed decision (Alternate) of Commissioner Guzman Aceves orders Southern California Edison (SCE) and San Diego Gas & Electric (SDG&E), and authorizes Pacific Gas and Electric (PG&E), to conduct an additional Pilot auction in 2018 for deliveries in 2019. The Alternate adopts a budget of $6 million for SCE, $1.5 million for SDG&E, and $6 million for PG&E should it elect to conduct the additional auction. The Alternate further specifies the auction parameters and procurement criteria to be utilized for the additional auction.

Both the ALJs' PD and the Alternate of Commissioner Guzman Aceves are identical with regard to the other two issues decided in the PD and Alternate, which adopts steps to implement the Competitive Neutrality Cost Causation Principle and develop a framework for new models of demand response.

Decision **PROPOSED DECISION OF ALJ HYMES and ALJ ATAMTURK**
(Mailed 9/15/2017)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Enhance the Role of Demand Response in Meeting the State's Resource Planning Needs and Operational Requirements.	Rulemaking 13-09-011

DECISION ADOPTING STEPS FOR IMPLEMENTING THE COMPETITIVE NEUTRALITY COST CAUSATION PRINCIPLE, DECLINING TO HOLD AN AUCTION IN 2018 FOR THE DEMAND RESPONSE AUCTION MECHANISM, AND ESTABLISHING A WORKING GROUP FOR THE CREATION OF NEW MODELS OF DEMAND RESPONSE

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Summary

This Decision adopts steps to implement the Competitive Neutrality Cost Causation Principle, which allow Community Choice Aggregation or Direct Access electric service providers to create and administer demand response programs on a level playing field with investor-owned utilities. These steps are also meant to ensure the objectives of the demand response goal and principles are met. In addition, this Decision declines to approve a 2018 auction for the Demand Response Auction Mechanism pilot. Moreover, to combat barriers to market integration and develop a framework for new models of demand response, this Decision establishes two working groups open to all interested persons: Supply Side Working Group and Load Consumption Working Group. The investor-owned utilities, on behalf of both working groups, shall provide quarterly status reports on the working groups' progress and, on behalf of the Load Consumption Working Group, a final report on its proposals, which will inform a future rulemaking to consider new models of demand response.

This Decision completes phases two and three of this proceeding and determines that phase four should be a new and separate proceeding in the future. Rulemaking 13-09-011 is closed.

1. Procedural Background

On September 19, 2013, the Commission initiated Rulemaking (R.) 13-09-011 by approving the Order Instituting Rulemaking (OIR) to enhance the role of demand response in meeting the State's electric resource planning needs and operational requirements. The Commission initiated the rulemaking with the intention of retooling demand response to align with the grid's needs while enhancing the role of demand response in carrying out California's energy policies.[1]

The first major decision of this proceeding occurred in December 2014 when the Commission approved Decision (D.) 14-12-024, requiring bifurcation of demand response programs and integration of supply side resources into the California Independent System Operators (CAISO) energy market by the year 2018. Relevant to this Decision, D.14-12-024: 1) adopted a net neutrality cost causation principle, 2) directed Commission staff to study the potential of demand response in California (Potential Study), and 3) established a working group to develop the demand response auction mechanism pilot (Pilot).[2]

On April 1, 2016, Lawrence Berkeley National Laboratory (Contractors) delivered its interim report on Phase I results of the Potential Study.[3] The interim results focused on existing programs and stated that the second phase of the Potential Study would focus on newer models of demand response. In D.16-09-056, the Commission established guidance to Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (SCE), (jointly, the Utilities) regarding existing models of demand response programs for 2018 and beyond and determined that a second decision would focus on new models of demand response programs, which would be developed following the delivery of the second phase of the

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1 OIR at 15.

2 D.14-12-024 at 18.

3 The Interim Report on Phase I Results of the 2015 California Demand Response Potential Study, April 1, 2016, is available at: http://www.cpuc.ca.gov/General.aspx?id=10622

Potential Study. The Contractors provided the second phase of the Potential Study on March 1, 2017.

One objective of the Potential Study was to assist the Commission in setting a goal for demand response. In September 2016, the Commission approved D.16-09-056, which adopted guidance for future demand response portfolios by establishing a goal and a set of principles for demand response. Also relevant to this Decision, D.16-09-056 determined that certain fossil-fueled resources should not be allowed as part of a demand response program, beginning January 1, 2018.[4]

In early 2017, the Commission facilitated three workshops in this proceeding related to this Decision. On February 22, 2017, a workshop to discuss program year 2016 took place, during which time parties addressed remaining barriers to the integration of demand response into the CAISO energy market. The assigned Administrative Law Judges also facilitated a workshop on April 4, 2017, to discuss the pathway toward development of new models of demand response. Lastly, on April 10, 2017, parties participated in a workshop to discuss the implementation of the cost causation competitive neutrality

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[4] D.16-09-056 at Ordering Paragraph 3 established the following list of resources prohibited to be used for load reduction during demand response events: distributed generation technologies using diesel, natural gas, gasoline, propane, or liquefied gas, in topping cycle Combined Heat and Power (CHP) or non-CHP configuration. The following resources are exempt from the prohibition: pressure reduction turbines and water-heat-to-power bottoming cycle CHP, storage, and storage coupled with renewable generation that meet the relevant greenhouse gas emissions standards. The following programs are exempt from the prohibition: air conditioner cycling programs, permanent load shifting programs, schedule load reduction programs, the optional binding mandatory curtailment, time of use rates, critical peak pricing, real time pricing, and peak time rebate.

principle and review the February 17, 2017 proposal for such implementation filed by the Utilities (Utilities Proposal).[5]

On April 27, 2017, the Commission approved D.17-04-045, Addressing Petitions for Modification. Relevant to this Decision, D.17-04-045 determined that business opportunities for demand response providers could be limited under the previously approved $27 million budget for the 2017 Pilot solicitation and directed responses to questions regarding whether the Commission should approve an additional auction in 2018 for 2019 deliveries.[6]

The assigned Commissioner issued an Amended Scoping Memo on May 11, 2017, which formally expanded the scope of the proceeding to include new models of demand response. The May 11, 2017 Amended Scoping Memo extended the schedule of the proceeding not only to address this new issue but also to complete outstanding issues from phases two and three, including addressing the proposal to implement the cost causation competitive neutrality principle and whether to authorize an additional auction in 2018 for the Demand Response Auction Mechanism pilot.

On May 22, 2017, the assigned Administrative Law Judges issued a Ruling requesting responses to three sets of questions: 1) Implementation of the Competitive Neutrality Cost Causation principle; 2) CAISO Market Integration Barriers; and 3) Pathways to New Models of Demand Response.

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[5] The following parties filed comments on the Utilities' Implementation Proposal on March 3, 2017: EnerNoc, Inc., Comverge, Inc., CPower, and EnergyHub (together the Joint Demand Response Parties); Marin Clean Energy; Office of Ratepayer Advocates (ORA); and Shell Energy North America (Shell). Reply Comments were filed on March 15, 2017 by the California Large Energy Consumers Association (CLECA), Alliance for Retail Energy Markets/Direct Access Customer Coalition, Marin Clean Energy, and the Utilities.

[6] D.17-04-045 at Ordering Paragraph 6.

On June 19, 2017, the following parties timely filed comments to the questions regarding the implementation of the competitive neutrality cost causation principle: CLECA; Marin Clean Energy; ORA; OhmConnect, Inc. (OhmConnect); and the Utilities. On July 5, 2016, Marin Clean Energy, ORA, and the Utilities timely filed reply comments.

On July 6, 2017, the following parties timely filed responses to the questions regarding CAISO Market Integration Barriers and Pathways to New Models of Demand Response: California Energy Storage Association (CESA), CAISO, CALSEIA, CLECA, Joint Demand Response Parties, NRG Energy, Inc., ORA, OhmConnect, PG&E, SDG&E, Stem, Inc., SCE, and Tesla. On July 17, 2017, the following parties timely filed reply comments: CLECA, Joint Demand Response Parties, PG&E, SCE, and Tesla.

Also on July 6, 2017, the following parties timely filed responses to the questions posed in D.17-04-045 regarding a possible 2018 auction in the Pilot: Joint Demand Response Parties, ORA, OhmConnect, PG&E, SDG&E, and SCE. On July 17, 2017, the following parties timely filed reply comments: Joint Demand Response Parties, ORA, PG&E, SDG&E, and SCE.

2. Discussion

There are three issues addressed in this Decision: 1) How to implement the competitive neutrality cost causation principle adopted by the Commission in D.14-12-024; 2) Whether the Commission should approve an additional Pilot auction to be held in the spring of 2018; and 3) Guidance for the appropriate next steps for developing the new models of demand response discussed in the Potential Study. Each issue is discussed and determined separately below.

2.1. Competitive Neutrality Cost Causation Principle

This Decision adopts a simplified version of the Utilities proposal for implementing the Competitive Neutrality Cost Causation Principle adopted in D.14-12-024. First, this Decision adopts a definition for what constitutes a similar program:

A Community Choice Aggregator or Direct Access Provider's (Competing Provider) demand response program is considered similar to a utility's program if the Competing Provider's program meets all of the following requirements:

- *is offered to the same type and approximate number of customers, e.g., residential customer;*
- *is classified as and can be demonstrated to be the same resource as the Competing Utility's program, either a load modifying or supply resource, as defined by the Commission;*
- *can validate that customers are not receiving load shedding incentives for the use of prohibited resources during demand response events; and*
- *allows the participation of third-party demand response providers or aggregators, if the Competing Utility's program also allows such third-party participation.*

Second, this Decision adopts a four-step process using a Tier Three Advice Letter regulatory process to determine whether a demand response program is similar. If the Commission determines through the Tier Three Advice Letter process that a Competing Provider's demand response program is similar to a Competing Utility's program, the utility shall begin the process of ceasing marketing and cost recovery of the similar program within 30 days of the issuance of the Resolution making the determination and shall complete the process within 365 days of the issuance of that Resolution. In order to compensate the customers who are no longer eligible for the Utility's similar demand response programs because they are served by a Competing Provider, the utility shall employ the use of a credit on the Competing Provider's customers' bill.

Furthermore, this Decision determines that in order to ensure that the Commission is fulfilling its responsibilities to ensure safe and reliable electric service, a report of the implementation of the Competitive Neutrality Principle should be completed within three years after the first Competing Provider receives an approval from the Commission for a similar demand response program. The report should include a review of the implementation steps and the impact of the implementation, as further described below.

2.1.1. Competitive Neutrality Cost Causation Principle Background

In D.14-12-024, the Commission adopted two cost causation principles. First, D.14-12-024 held that any demand response program or tariff that is available to all customers shall be paid for by all customers. Hence, if a demand response program or tariff is only available to bundled customers, the costs for that program or tariff would only be borne by bundled customers. Second, the Commission pointed to a competitive barrier, as explained by Marin Clean

Energy, where Community Choice Aggregator or Direct Access providers "cannot justify creating such programs at ratepayer expense when Community Choice Aggregator customers are already being charged for the utility-offered programs."[7] In order to combat this barrier, the Commission adopted the competitive neutrality cost causation principle whereby a competing utility shall cease cost recovery from and marketing to a Community Choice Aggregator or Direct Access provider's customers when that provider implements a similar demand response program in the utility's service territory.[8]

Pursuant to a December 2, 2016 Ruling, on February 17, 2017 the Utilities filed a proposal for implementing the competitive neutrality principle (Proposal). The Proposal is a four-step process that would, first, have a Direct Access or Community Choice Aggregator provider offer interested persons notice of an intention to launch a demand response program in a competing utility's territory. The notice would include information on how the proposed demand response program: (1) meets current Commission demand response policy and state mandates, and (2) complies with the definition of being similar to a current demand response program in the competing utility's territory. The Proposal suggests that interested persons be permitted to comment on the contents of the notice. The Commission would then proceed with the Proposal's step two, an informal assessment of whether the proposed program meets State policy and Commission mandates. If the proposed demand response program meets the requirements, the Commission would then proceed with the Proposal's step three, a formal assessment of whether that program is similar to an existing

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[7] D.14-12-024 at 48-49.

program; this assessment would take place through a workshop and a formal Commission determination.

The Utilities propose that the determination of a similar program should include whether the provider/program: i) has sufficient financial backing to achieve Commission demand response goals, ii) allows the use of third-party providers and aggregators, iii) prohibits fossil-fueled resources for demand response purposes and has established the required verification procedures; and iv) is bifurcated into supply-side and load modifying resources. If the proposed program meets the standards, the competing utility would proceed with the Proposal's step four: removing the direct access or Community Choice Aggregator provider's customers from the affected utility demand response program along with exempting those customers from paying the utility program costs. The Proposal states that the "timing to complete implementation of these changes should be approximately one year from issuance of the Commission's determination, with some flexibility, for instance, for coordination with utility rate mechanisms, as needed."[9] Finally, the Proposal recommends the use of a credit on the Competing Provider's customers' bill to compensate for no longer being eligible to participate in the similar demand response program.

Comments on the Utilities' Proposal range from support by ORA to the request for additional information and clarity by the Joint Demand Response Parties. Both Marin Clean Energy and Shell Energy North America (Shell) contend that the Proposal does not address the essence of the Principle's

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[8] D.14-12-024 at Ordering Paragraph 8b.

[9] Joint Utilities' Proposal on Competitive Neutrality Cost Causation Principle, February 17, 2017, at 6.

intention to avoid barriers to competition in the demand response market, is "complex and administratively burdensome," and should be simplified.[10] Parties disagree upon the definition of a "similar program."[11] Parties also express concern about the following matters, in no particular order:

- whether a determination of the permanent Demand Response Auction Mechanism as being a "similar program" could result in a "bundled-only program;"[12]
- whether the implementation time is reasonable;[13]
- whether the use of third-party providers should be required in the proposed similar demand response programs;[14]
- whether the Commission would be overreaching its authority in implementing portions of the Utilities' Proposal;[15]
- whether the recovery of stranded costs[16] are in the scope of this proceeding;[17] and

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[10] Shell Opening Comments to the Utilities' Implementation Proposal, March 3, 2017 at 2 and Marin Clean Energy Opening Comments to the Utilities' Implementation Proposal, March 3, 2017 at 1-3.

[11] *See*, for example, Marin Clean Energy Opening Comments to the Utilities' Implementation Proposal, March3, 2017 at 5-6; Shell Opening Comments to the Utilities' Implementation Proposal, March 3, 2017 at 3-6; and Joint Demand Response Parties Comments to the Utilities' Proposal, March 3, 2017 at 3-5.

[12] Joint Demand Response Parties Comments to the Utilities' Proposal, March 3, 2017 at 5.

[13] Shell Opening Comments to the Utilities' Implementation Proposal, March 3, 2017 at 4-5.

[14] Shell Opening Comments to the Utilities' Implementation Proposal, March 3, 2017 at 5.

[15] Marin Clean Energy Opening Comments to the Utilities' Implementation Proposal, March 3, 2017 at 4 and Shell Opening Comments to the Utilities' Implementation Proposal, March 3, 2017 at 5.

[16] The Utilities state that there are probably no authorized existing costs that would likely be stranded in the next few years expect possibly for the SCE contracts to procure

Footnote continued on next page

- whether the Utilities' proposed methodology for discontinuing cost recovery is reasonable.[18]

During the April 10, 2017 workshop, the parties discussed several aspects of the Utilities' Proposal and focused on the definition of similar program. While the parties participated in small group discussions and developed definitions, there was no overall consensus on how to define a similar program. In response to the workshop, a Ruling was issued on May 22, 2017 asking parties to respond to questions regarding this matter. Parties were once again asked to define a similar demand response program. Commenters agree that similar does not mean identical, but opinions regarding the degree to which two programs can be considered similar are varied. Parties were also asked what regulatory process should be followed to determine whether a demand response program is similar. Most parties propose the Advice Letter process with some variation of Tier Two and Tier Three, while CLECA proposed an expedited application process.

2.1.2. Competitive Neutrality Cost Causation Principle Jurisdictional Issues

The Competitive Neutrality Cost Causation Principle relates to two different types of load serving entities with different regulatory requirements

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preferred resources to meet local capacity needs in the Western Los Angeles Basin. (*See* Utilities' Proposal at 23 and 26-27.)

[17] Marin Clean Energy Opening Comments to the Utilities' Implementation Proposal, March 3, 2017 at 6 and Shell Opening Comments to the Utilities' Implementation Proposal, March 3, 2017 at 7.

[18] Marin Clean Energy Opening Comments to the Utilities' Implementation Proposal, March3, 2017 at 8 and Shell Opening Comments to the Utilities' Implementation Proposal, March 3, 2017 at 4-5.

than the Utilities. Each is explained below along with an overview of the Commission's jurisdiction as it relates to demand response programs.

Assembly Bill (AB) 117 and Senate Bill (SB) 790 established Community Choice Aggregation and authorized local governments to aggregate customer electric load and purchase electricity for customers. AB 117 requires electrical corporations to cooperate fully with any Community Choice Aggregators that implement Community Choice Aggregator programs. The investor-owned utility remains responsible for providing transmission and distribution services, metering billing collection and customer service to retail customers that participate in a Community Choice Aggregator program.[19]

In some respects, the Commission's regulatory authority over Community Choice Aggregators differs from its jurisdiction over the investor-owned utilities. Nonetheless, Community Choice Aggregators must comply with resource adequacy obligations. Specifically, Pub. Util. Code § 380 directs the Commission to establish resource adequacy requirements for all load serving entities and requires that each load serving entity is subject to the same requirements for resource adequacy and the renewables portfolio standard program that are applicable to electrical corporations.[20] Community Choice Aggregators are included in the definition of load serving entity. Furthermore, the Commission requires sufficient information, including, but not limited to anticipated load, actual load, and measures taken to ensure resource adequacy, to be reported to enable the Commission to determine compliance with resource adequacy

[19] Pub. Util. Code § 366.2.

[20] Pub. Util. Code § 380(e).

requirements.[21] Determination of the full extent of the Commission's jurisdiction over Community Choice Aggregators is not within the scope of this proceeding.[22]

Direct Access service is retail electric service where customers purchase electricity from a competitive provider called an electric service provider, instead of from an investor-owned utility. The investor-owned utility delivers the electricity from the electric service provider to the customer over the utility's distribution system. SB 695 governs the direct access program. SB 695 also requires the Commission to ensure that these other energy service providers are subject to the same procurement–related requirements that apply to investor-owned utilities, including resource adequacy requirements, renewables portfolio standards, and greenhouse gas emission reductions.

As indicated above, Pub. Util. Code § 380 requires that all load serving entities (including electrical corporations, electric service providers, and Community Choice Aggregators) shall be subject to the same requirements for resource adequacy and the renewables portfolio standard program that are applicable to electrical corporations,[23] and are required to provide sufficient information to enable the Commission to determine the required compliance.[24]

2.1.3. Implementation of the Competitive Neutrality Cost Causation Principle

In implementing the Competitive Neutrality Cost Causation Principle, the Commission is faced with the need to balance competing objectives. While the

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21 Pub. Util. Code § 380(f).

22 The Commission has issued decisions on the question in various decisions, including D.10-12-035 and D.05-12-042 (as modified by D.10-05-050).

23 Pub. Util. Code § 380(e).

24 Pub. Util. Code § 380(f).

underlying objective of this principle is ensuring fair competition between the Utilities' demand response programs and those provided by Community Choice Aggregator and Direct Access providers (Competing Providers), the Commission must also ensure that it is meeting the adopted demand response goal whereby Commission regulated demand response programs assist the State in meeting its environmental objectives, cost-effectively meet the needs of the grid, and enable customers to meet their energy needs at a reduced cost.[25] In balancing the objective of competitive fairness with the objectives established in the demand response goal and principles,[26] this Decision establishes the following four-step process for implementing the Competitive Neutrality Cost Causation principle.

- Step One: A Competing Provider may file a Tier Three Advice Letter requesting Commission determination that the Competing Provider's proposed demand response program is similar to a Competing Utility's program.

The Utilities' Proposal recommends a preliminary assessment of whether a proposed competing program supports state policy and Commission mandates followed by a more thorough detailed assessment of program attributes through evidentiary hearings, workshops, etc.[27] Marin Clean Energy contends the multiple-step process is onerous and anti-competitive. This Decision balances

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[25] D.16-09-056 at Ordering Paragraph 7.

[26] D.16-09-056 established six principles for all Commission-regulated demand response programs and required that the Utilities and third party providers must adhere to these principles. The principles state that demand response shall be 1) flexible and reliable, 2) shall evolve to complement the needs of the grid, 3) shall provide customers with the choice of demand response service provider, 4) shall be implemented in coordination with rate design, 5) shall be transparent, and 6) shall be market-driven leading to a competitive, technology-neutral, open market with a preference for third-party providers and performance based contracts at competitively determined prices. (*See* D.16-09-056 at Ordering Paragraph 8.)

[27] Utilities Proposal, February 17, 2017 at 4-5.

the demand response principles of competitive fairness and transparency and finds the multiple-step process inefficient and unnecessary. A one-step assessment is efficient and provides the necessary transparency required by the demand response principles. The Proposal recommendation for a preliminary assessment should not be adopted.

As previously stated, most parties agree that the Advice Letter process is an efficient process for the purposes of determining whether a provider's demand response program is similar. Marin Clean Energy contends that a Tier Two Advice Letter is the more appropriate level of oversight and argues that once the definition of similar is established, Staff should have adequate direction to make the determination of what constitutes a similar program without the need for a Commission vote on a resolution.[28] In response, the Utilities state that the Tier Two Advice Letter process is ministerial and assert that this process requires a meaningful review by the Commission, staff, the Utilities, and interested parties.[29] In recommending the use of the lengthier application process, CLECA cautions that the Advice Letter process would not suffice due to the fact that along with the cost recovery impact, customers would no longer be able to participate in the similar utility program.[30]

Given that the definition of a similar program is determined herein, the Utilities and other interested persons will be afforded an opportunity to be heard

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[28] Marin Clean Energy Opening Comments on Implementation of Competitive Neutrality Cost Causation Principle, June 19, 2017 at 10-11.

[29] Utilities Reply Comments on Implementation of Competitive Neutrality Cost Causation Principle, July 5, 2017 at 11-12.

[30] CLECA Opening Comments on Implementation of Competitive Neutrality Cost Causation Principle, June 19, 2017 at 8.

by submitting written input in the Advice Letter process, and the Commission will have final approval of the Advice Letter, adopting the use of the Tier Three Advice Letter process strikes a balance of expediency, transparency, and the appropriate level of regulatory oversight. The Commission should adopt a Tier Three Advice Letter process to determine whether a Competing Provider's proposed demand response program is similar to a Competing Utility's program. The Advice Letter should be served in accordance with General Order 96B.

- Step One A: The Contents of the Advice Letter shall include: 1) a brief overview of the Competing Provider's proposed demand response program, ex ante load impacts for the proposed program, and anticipated start date; 2) customer type description and approximate number of customers to be marketed to; 3) delineation of the proposed program as either a load modifying resource that is embedded in the California Energy Commission's unmanaged/base case load forecast or a supply resource able to be integrated into the CAISO wholesale market and ability to demonstrate how the program meets either delineation; 4) description of how the Competing Provider will validate to the Commission that its customers will not receive an incentive for the use of prohibited resources during a demand response event; 5) description of whether the Competing Provider's demand response program will use a third party-aggregator; 6) the name of the Competing Utility; 7) the Competing Utility's program(s) that the Competing Provider considers to be similar and an explanation, pursuant to this Decision, and 8) the Competing Utility's previous year's ex ante load impacts for the program(s) as provided in the utility's annual Load Impact Protocol filings.

The Utilities, ORA and OhmConnect agree that a similar program should comply with all demand response related statutes and mandates, be bifurcated into load modifying and supply side resources, and comply with the

Commission's rules regarding prohibited resources during demand response events.[31] The Utilities also contend that an assessment of similar should also require similar customer class groups and similar grid benefits.[32] Agreeing with the requirement of similar customer class and program goals, CLECA includes the requirements of similar incentive and penalties as well as common program or event parameters.[33] CLECA also provides a dictionary definition of similar: having characteristics in common; alike in substance or essentials.[34]

Arguing that similar does not mean identical, Marin Clean Energy proposes a set of guidelines that describe what similar programs should not be required to be or do.[35] Marin Clean Energy maintains that, to ensure fair competition, the Commission should interpret similar in the broadest possible terms and that requiring other elements adds ambiguity and undermines competitive neutrality. Marin Clean Energy proposes that the only metrics by which a program needs to be deemed similar are whether a program provides

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[31] *See* ORA Opening Comments on Implementation of the Competitive Neutrality Cost Allocation Principle, June 19, 2017 at 3-4, OhmConnect Opening Comments on Implementation of the Competitive Neutrality Cost Allocation Principle, June 19, 2017 at 2 and 5, and Utilities Proposal, June 19, 2017 at 2-3.

[32] Utilities Opening Comments on Implementation of the Competitive Neutrality Cost Allocation Principle, June 19, 2017 at 2.

[33] CLECA Opening Comments on Implementation of the Competitive Neutrality Cost Allocation Principle, June 19, 2017 at 2-3.

[34] CLECA Opening Comments on Implementation of the Competitive Neutrality Cost Allocation Principle, June 19, 2017 at 2-3, citing the Merriam-Webster Dictionary.

[35] Marin Clean Energy Opening Comments on Implementation of the Competitive Neutrality Cost Allocation Principle, June 19, 2017 at 3-5.

the same type of resource: load modifying or supply-side and whether the program is offered to some customers in a particular customer class.[36]

In response, the Utilities assert that such a broad definition of similar would result in all customers in the similar class no longer being eligible for any similar resource demand response program in the Competing Utility's territory. Furthermore, the Utilities contend this definition limits a customer's choice and "significantly diminishes the Commission's power to make demand response a meaningful tool to achieve its goals of grid management and renewable integration."[37]

In developing a definition for what constitutes a similar program, the Commission must balance multiple demand response objectives and principles including: meeting environmental objectives, meeting the needs of the grid, enabling customers to meet their energy needs at a reduced cost, ensuring customers have the right to provide demand response through a service provider of their choice, ensuring demand response processes are transparent, and ensuring demand response activities are market driven and lead to a competitive, technology-neutral, open market with a preference for services provided by third-parties. This Decision strives for simplicity while balancing the multiple objectives and principles.

As noted by the Utilities, Marin Clean Energy's definition of similar could result in a Utility losing the ability to market any supply side resource to all the

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[36] Marin Clean Energy Opening Comments on Implementation of Competitive Neutrality Cost Causation Principle, June 19, 2017 at 3-5 and Marin Clean Energy Reply Comments on Implementation of Competitive Neutrality Cost Causation Principle, July 5, 2017 at 3.

[37] Utilities Reply Comments on Implementation of Competitive Neutrality Cost Causation Principle, July 5, 2017 at 5.

residential unbundled customers in a particular Community Choice Aggregator or Direct Access provider's territory. For example, if the competing program is only offering a single supply-side program to a small subset of residential customers, other unbundled residential customers in the Competing Provider's territory would have no access to demand response incentives. Furthermore, the Utility could lose the load impact it currently attains from the Competing Provider's residential customers during demand response events and, most importantly, the State may not attain the same load impact through the similar smaller program.

This Decision denies the request by Marin Clean Energy to interpret similar in the broadest possible terms by only looking at whether a program is offered to a subset of the same customers and if the program is either load modifying or a supply side resource. Instead, this Decision requires that, in the advice letter, the Competing Provider define the customer type and provide the approximate number of customers to whom its proposed demand response program will market. This will allow the Commission to ensure that a large group of customers are not omitted from demand response opportunities. This Decision finds that a similar program requires that the customer type and approximate number marketed to are "alike in substance or essentials." Therefore, in order to be deemed similar, the type of customer and approximate number of customers marketed to in the Competing Provider's program should be similar to the utility program's customer type and approximate number of unbundled customers to which the utility markets.

All parties agree that the competing provider should designate the demand response resource type this program will target. A similar resource type should comport with Commission definitions of load modifying or supply resource and either be counted in the California Energy Commission's forecast or be able to be integrated into the CAISO market and comply with all CAISO market rules. The Competing Provider shall provide the resource type in the advice letter, as well as information demonstrating how the resource meets the Commission's definition of that resource, i.e., evidence of how it will be counted in the California Energy Commission's forecast or plans on how the program will be integrated into the CAISO market and will comply with all CAISO rules.

Some parties contend that a similar program should meet all demand response mandates and environmental policies.[38] Marin Clean Energy maintains that, as a Community Choice Aggregator, it was founded to expand procurement of renewables and reduce greenhouse gas emissions. Furthermore, Marin Clean Energy contends that Community Choice Aggregators perform above and beyond state mandates, setting more aggressive energy policy goals than the state requires. Surmising that the clean energy goals of California and Community Choice Aggregators are aligned,[39] Marin Clean Energy argues that imposing such requirements on a similar program is redundant but also unnecessary because demand response resources, by their nature, meet California's clean energy policies.[40] In response, the Utilities reference directives that Load Serving Entities are required to meet including Pub. Util. Code

[38] CLECA Opening Comments at 4-5, Utilities Opening Comments at 2-3, ORA Opening Comments at 3-4, and OhmConnect Opening Comments at 5.

[39] Marin Clean Energy Opening Comments to Implementation of Competitive Neutrality Cost Allocation Principle, June 19, 2017 at 5-6.

[40] Marin Clean Energy Reply Comments to Implementation of Competitive Neutrality Cost Allocation Principle, June 19, 2017 at 2.

§§ 454.52 and 454.51, which addresses greenhouse gas emissions targets.[41] Both OhmConnect and ORA point specifically to the Commission's policy on the use of prohibited resources during demand response events and maintain that a similar program should comply with this policy.[42] ORA contends that in order to meet resource adequacy requirements, a resource should comply with the prohibited resources policy and highlights that demand response is not a clean resource if the prohibited resource policy is not followed.[43] Marin Clean Energy agrees that all Load Serving Entities, including Marin Clean Energy, must comply with resource adequacy requirements, renewable portfolio standards, energy storage statutes, and integrated resource planning but contends that imposing any additional requirements, *i.e.,* prohibited resources compliance, would create greater cost barriers to Community Choice Aggregators and their customers.[44] Additionally, Marin Clean Energy argues that the Commission's prohibited resources policy is not state-mandated, and therefore Marin Clean Energy should not be required to comply with the policy.[45]

This Decision continues the theme of balancing competing objectives. As noted by the Utilities, all load serving entities, including Community Choice Aggregators are required to comply with Pub. Util. Code § 454.52, which requires these entities to file an integrated resource plan to (among other things) ensure that load serving entities meet greenhouse gas emissions reduction

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41 Utilities Opening Comments at 5-6.

42 ORA Opening Comments at 4 and OhmConnect Opening Comments at 5.

43 ORA Reply Comments at 1-2.

44 Marin Clean Energy Opening Comments at 6-10.

45 *Id.* at 10.

targets, procure 50 percent eligible renewable energy resources by 2030, enhance demand-side management, and minimize local pollutants. Therefore, requiring a similar program to adhere to all environmental requirements is redundant of the requirements in Pub. Util. Code § 454.52. Furthermore, all load serving entities are required to comply with resource adequacy requirements, including reporting. The Commission reviews these plans in other resource adequacy proceedings; hence, there is no need to duplicate these efforts in this proceeding.

However, for the purposes of determining the impact of the Principle's implementation, the Commission requires a Competing Provider to provide ex ante and ex post load impacts. Ex-ante load impacts shall be provided with the Tier Three Advice Letter and ex post load impacts shall be required as part of the evaluation reporting discussed below. In addition, the Commission has previously determined that fossil-fueled back up generation is antithetical to the efforts of the Commissions Energy Action Plan and the Loading Order.[46] In order for a Competing Provider's program to be similar it should not use prohibited resources to enable load shed during demand response events. To be deemed similar, a Competing Providers' demand response program must demonstrate that the program can validate adherence to the Commission's prohibited resource policy, as required by D.16-09-056.

In regard to the issue of what is similar, this decision also addresses the question of customer choice. One could argue that customers already have a choice when determining their load serving entity and choosing between an investor-owned utility, a Community Choice Aggregator or another energy

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[46] D.16-09-056 at Finding of Fact No. 7.

service provider. However, the Commission has spent a great deal of time and effort in ensuring that third-party entities (*e.g.,* demand response providers and aggregators) have a level playing field in order to increase customer choice and provider competition. Hence, in order to be deemed similar, a Competing Provider's program should also allow for third-party providers' participation if the Competing Utility's program also allows for third party provider's participation. This requirement comports with the Commission's demand response principle regarding customer choice.

Lastly, in order to facilitate the analysis of the advice letter, this Decision requires the Competing Provider to include in the advice letter: the name of the competing demand response utility, the utility's demand response program(s) that is/are similar to the Competing Provider's proposed demand response programs, the most recent load impacts reported for the Utility's demand response program, the ex-ante load impacts of the proposed demand response program, and an explanation of how the proposed programs' similarities comply with this Decision. This should accelerate the staff analysis and should lead to an expedient regulatory process.

- Step Two: The Tier Three Advice Letter will include a protest period, staff analysis, and proposed resolution. This process will follow the same process as outlined in General Order 96B.

As previously stated, the use of the Tier Three Advice Letter process strikes a balance of expediency, transparency and the appropriate level of regulatory oversight. The Tier Three Advice Letter process will provide parties an opportunity to comment on the contents of the Advice Letter and allow the Competing Provider to respond to any concerns voiced. Commission Staff will review the contents of the Tier Three Advice Letter and any protests and responses. If necessary, Staff may request additional information. Furthermore, if appropriate, Staff may consider holding a workshop to assist in understanding stakeholder positions. To ensure expediency, Staff should comply with the time process outlined in General Order 96B.

- Step Three: If the outcome of the resolution determines that the Competing Provider's proposed demand response program is similar, the Competing Utility has 30 days from the issuance of the resolution to begin the process to cease cost recovery by and marketing to the Competing Provider's customers of the similar program. By the 60th day, a letter shall be sent by the Competing Utility to the relevant customers notifying them of the change. The letter will also explain to customers of the Competing Provider currently enrolled in the Competing Utility's similar demand response program that they will cease to be eligible for that program at the end of the implementation period but will be eligible to participate in the Competing Provider's similar demand response program. No later than 365 days following the issuance of the resolution (the end of the implementation period), the Competing Utility shall complete the changes.

The Competitive Neutrality Cost Allocation principle requires that no later than one year after implementation of a demand response program the Competing Utility shall cease cost recovery of and marketing to the customers of the Competing Provider's similar program. This Decision regards the determination of whether a program is similar as the beginning of the implementation period. Once the Commission makes such a determination, the Competing Utility has one year to cease cost recovery and marketing to the customers of the program(s) deemed to be similar. Shell objects to the process recommended in the Utility's Proposal and argues that the Competing Utility should be able to remove corresponding costs within two billing cycles. The

Commission has already made its determination on this issue in D.14-12-024; the one-year period will not be re-litigated in this Decision. Furthermore, in order to limit customer confusion, the Competing Utility, in coordination with the Competing Provider with the deemed similar demand response program, shall provide a letter to the affected customers explaining the process and alerting them to the impending change.

- Step Four: Within one billing cycle following the end of cost recovery and marketing of the similar demand response program by the Competing Utility, affected customers shall receive a bill credit for the similar program(s).

The Utilities recommend the use of a credit on the Competing Provider's affected customers' bills and suggest a stakeholder workshop process to develop the method to determine the credit. Marin Clean Energy argues this would cause customer confusion. No party provided any reasonable alternative.

In Step Three, this Decision requires a letter to be sent to affected customers explaining the implementation of the competitive neutrality principle. This letter can also serve as a venue to explain the bill credit, thus eliminating customer confusion.

Additionally, this Decision also adopts a public process to develop a method to determine the credit. Within 30 days of the first competing demand response program deemed similar by the Commission, the Utilities shall serve a proposed method to all parties to this proceeding. Within 30 days after the proposed method is served to stakeholder, the Commission's Energy Division shall facilitate a workshop to discuss the proposed method and develop a consensus proposal. All parties and other interested persons are advised to participate because the final method will be used by all Utilities for all future credits for similar demand response programs. Within 15 days after the workshop, the Utilities shall submit a Tier Three Advice Letter that either i) proposes the consensus method or ii) includes all the discussed options and proposes one of the options but describes all alternatives.

The Utilities request cost recovery of stranded costs but provide no evidence that stranded costs exist. Hence, this Decision does not address the issue of recovery of stranded costs. However, a Utility may include a request for recovery of any such stranded costs in an application for recovery of costs to implement the bill credits in accordance with the procedures adopted through the Tier Three Advice Letter process.

As the Commission is embarking upon new territory with the implementation of the Competitive Neutrality Cost Causation Principle, it is prudent to review the implementation to ensure the process and the principle itself is achieving the intent of the Commission. Furthermore, the Commission should also ensure that the implementation of the principle does not create unintended consequences that could undermine the State's ability to meet the demand response goal and associated objectives and principles adopted by the Commission.

The Commission's Energy Division should provide the Commission with a report that addresses: (1) the implementation process based on information and feedback on the four-step process received from any successful Competing Provider and the Competing Utility; (2) any demand response elements negatively affected by the implementation of the principle including: customer satisfaction, the Competing Utility's program participation in terms of numbers of customers, the load impact on a Competing Utility's demand response program, and the approximate load impact attained by the Competing

Provider's similar program; and (3) recommendations for any changes to address identified negative impacts. The Competing Provider(s) shall submit all data requested by Energy Division; the scope and timing of the data request will be addressed in the resolution determining whether a Competing Provider's program is similar. The report should be provided to the Commission 30 months following the adoption of the resolution granting a Competing Provider's program similar status.

This Decision confirms that the Demand Response Auction Mechanism, if adopted as a permanent mechanism, is not applicable to the Competitive Neutrality Principle because the auction mechanism is a procurement mechanism designed to allow third party direct participation into the CAISO market; it is not a demand response program. Furthermore, pilots are also not applicable because they are not considered to be fully implemented programs.

2.2. Demand Response Auction Mechanism Pilot

This Decision declines to authorize a 2018 demand response auction mechanism solicitation for the following reasons: alternative opportunities exist for demand response providers, additional resource adequacy is not needed by PG&E in 2019, and the demand response auction mechanism pilot market may be consolidated. Furthermore, this Decision also finds it prudent to wait for the completion of the Pilot evaluation before moving forward with additional auctions.

2.2.1. Demand Response Auction Mechanism Pilot Background

An objective for this rulemaking is to consider the adoption of a competitive procurement process to ensure cost-effective and reliable demand response resources for California and to engage new third parties and customers.[47] D.14-12-024 directed the Utilities to participate collaboratively in a working group to develop a design, protocol, standard contract and standard evaluation criteria for the Pilot. The purpose of the Pilot is to gain experience in the CAISO market and investigate whether a competitive procurement mechanism for supply side resources outside of traditional utility programs is viable.[48]

An initial auction took place in the spring of 2015 with deliveries in 2016 and a second auction took place in the spring of 2016 with deliveries in 2017. The Commission authorized budgets of $9 million for the 2015 auction, as approved in Resolution E-4728 and $13.5 million for the 2016 auction, as approved in Resolution E-4754. D.16-06-029, which approved bridge funding for 2017 demand response program and activities, directed the Utilities to expand upon the experience from the first two years of the Pilot by conducting a third auction in 2017 with deliveries in 2018. D.16-06-029 authorized a budget of $27 million. Shortly thereafter, D.16-09-056 directed the Commission's Energy Division to conduct an evaluation of the Pilot reasoning that if the Commission approves implementation of a permanent auction mechanism, the timing of evaluation steps will allow the Utilities to begin administering annual auctions in 2019 for 2020 and beyond delivery. In response to D.16-06-029, Resolution E-4817 approved the use of two-year contracts for continuation of the Pilot with an auction in 2017 and deliveries in 2018 and 2019. The Resolution directed the Utilities to apply the $27 million budget authorized in D.16-06-029 to incentive

47 R.13-09-011, September 19, 2013 at 18.

and administration payments to occur in 2018 and 2019, as well as administrative mechanism costs incurred in 2016 and 2017.

The Joint Demand Response Parties filed a petition for modification of D.16-06-029 requesting the Commission: i) to clarify that the funding originally authorized for a third year of the Pilot was for program year 2017 and, in order for the Commission to appropriately address the growth of the Pilot as it intended, ii) to revise D.16-06-029 so as to double the authorized funding. The Joint Demand Response Parties argue that the authorized funding level limited participation growth, which could result in damage to the businesses of the Joint Demand Response Parties.

In D.17-04-045, the Commission denied the request by the Joint Demand Response Parties to increase the budget for the Pilot because the record did not support doubling the budget due to the additional second year of delivery. However, the Commission recognized the potential effect the adopted budget may have on demand response opportunities for the Pilot over the course of the two-year delivery. Thus, D.17-04-045 directed parties to respond to a set of questions in order to complete the record on this issue. Parties were asked whether demand response providers' business opportunities are limited without a 2018 auction for deliveries in 2019 and, if approved, what the parameters of the auction should entail.

In response to the questions in D.17-04-045, the Joint Demand Response Parties and OhmConnect express support for a 2018 Pilot auction for deliveries in 2019, stating that the combination of ending and capping programs with little

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[48] D.14-12-024 at 12 and D.16-06-029 at 42.

increase in the Pilot megawatts is "stymieing demand response growth in the state by severely limiting program option for customers." The Utilities and ORA oppose the additional auction. SDG&E maintains that providers have had ample business opportunities.[49] While arguing that an additional Pilot auction may only provide limited opportunities, SCE also notes that there were fewer awarded bidders in 2017 with nearly twice the procured megawatts.[50] Furthermore, PG&E contends that additional megawatts procured through a 2019 auction would have negative value for ratepayers.[51] Additionally, ORA opines that the current Pilot structure may not further the Commission's goals, so it would be more prudent to await the results of Energy Division's evaluation of the Pilot.[52]

2.2.2. Denial of 2018 Auction for the Demand Response Auction Mechanism Pilot

This Decision finds that an additional 2018 auction for 2019 delivery is unnecessary given: 1) the various alternate opportunities for third party providers as cited by SCE, SDG&E, and PG&E,[53] 2) the lack of need for additional resource adequacy procurement in 2019 by PG&E, and 3) the recently discovered concern that the market may be consolidating. When the Commission first authorized the Auction Mechanism Pilot in D.14-12-024, it

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[49] SDG&E Opening Response to Questions in D.17-04-045, July 6, 2017 at 1-2.

[50] SCE Opening Response to Questions in D.17-04-045, July 6, 2017 at 2.

[51] PG&E Opening Response to Questions in D.17-040045, July 6, 2017 at 1.

[52] ORA Opening Response to Questions in D.17-04-045, July 6, 2017 at 4.

[53] SCE Opening Response to Questions in D.17-04-045, July 6, 2017 at 2; SDG&E Opening Response to Questions in D.17-040045, July 6, 2017 at 1-2; and PG&E Opening Response to Questions in D.17-040045, July 6, 2017 at 1.

noted that a pilot is a cost-effective way of implementing an idea, learning from that idea, and making changes to improve its success. The Commission has embarked upon an evaluation of the Pilot and anticipates the results of the evaluation to be provided in 2018. This Decision concludes that the Commission should wait for the completion of the Pilot evaluation before pursuing an additional auction. Once the evaluation is complete, the Commission can determine whether to adopt the demand response auction mechanism as a permanent activity and whether a permanent mechanism requires revision of the parameters established in D.16-09-056, Ordering Paragraph 12.

The Joint Demand Response Parties and OhmConnect contend that without a 2018 auction: 1) third-party demand response providers have limited business opportunities and 2) the Utilities will have difficulty increasing their contracted demand response auction mechanism capacity in order to comply with directives in D.16-09-056 to procure up to one gigawatt of demand response in 2020. Furthermore, the Joint Demand Response Parties maintain that the limited growth between the 2018 and 2019 scheduled deliveries correlates to the flat funding between the two years (*i.e.*, $13.5 million each in 2018 and 2019) and therefore results in a declining unit cost of capacity for providers.[54]

OhmConnect and the Joint Demand Response Parties point to the elimination of the Aggregator Managed Portfolio contracts and the waitlist for new enrollments in the Base Interruptible Program as evidence of diminishing business opportunities.[55] In response to the issue of limited opportunities,

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[54] Joint Demand Response Parties Comments to D.17-04-045, July 6, 2017 at 3.

[55] OhmConnect Opening Comments to D.17-04-045, July 6, 2017 at 1-2 and Joint Demand Response Parties Opening Comments to D.17-04-045, July 6, 2017 at 5.

SDG&E provides a list of opportunities demand response providers have had to secure a contract for deliveries in 2019 including: 2014 All Source Least Cost Resource Request for Offer, 2016 Preferred Resources Least Cost Resource Request for Offer, 2018-2019 Demand Response Auction Mechanism Request for Offer, Distribution Resources Plan Demonstration Project C, and the Integrated Distributed Energy Resource Incentive Pilot.[56] PG&E, SCE and ORA also point to the Capacity Bidding Program as an alternative opportunity for Demand Response Providers.[57] Furthermore, PG&E emphasizes that the megawatts procured for 2019 in PG&E's 2018-2019 Pilot auction exceeds the capacity of PG&E's Aggregated Managed Portfolio program before its closure.[58] No party contested this statement. This Decision finds that demand response providers have had several business opportunities to bid on contracts for deliveries in 2019.

Parties opposed to holding an additional auction in 2018 also argue that there is no need for another auction. SDG&E maintains that the need for another auction should be the determining factor, not the need for business opportunities.[59] Furthering the point, PG&E highlights that the 2018-2019 Auction resulted in procurement of 80 megawatts in August 2018 and 90 megawatts in August 2019, over 40 percent and 60 percent above 2017 megawatt levels, respectively.[60] This disputes the characterization by the Joint Demand

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56 SDG&E Opening Comments to D.17-04-045, July 6, 2017 at 1-2.

57 ORA Opening Comments to D.17-04-045, July 6, 2017 at 3-4, PG&E Opening Comments to D.17-04-045, July 6, 2017 at 3, and SCE Opening Comments to D.17-04-045, July 6, 2017 at 2.

58 PG&E Reply Comments to D.17-04-045, July 17, 2017 at 3.

59 SDG&E Reply Comments to D.17-04-045, July 17, 2017 at 1.

60 PG&E Opening Comments to D.17-04-045, July 6, 2017 at 2. Confidentiality Rules require the identity of the competitors remain anonymous.

Response Parties of modest growth and concerns that the flatter budgets would not provide significant growth.[61] This Decision finds that the one year budget and solicitation divided over two years of delivery did not lead to flat growth in capacity procured as indicated in the Utilities' Advice Letters.[62] This Decision concludes that there is no need for an additional demand response auction in 2018 for 2019 deliveries.

PG&E states that, in addition to its lack of need for additional capacity in 2019, another indication of the lack of need is in the Independent Evaluator's Report from the 2018-2019 Pilot solicitation, which found "significant consolidation in the market."[63] PG&E cites the findings of the Independent Evaluator from Advice Letter 5109-E, which describes the number of participants and responses from participants providing residential offers as declining between the second auction solicitation and the third, and notes that two major competitors dominated the offers submitted."[64] In response, the Joint Demand Response Parties reason that the uncertainty facing the market regarding change in Resource Adequacy availability hours, dispatch time, and the absence of a fully implemented e-signature process may have come into play with the decline in the number of bidders.[65] The Independent Evaluator's report is disconcerting and provides further evidence that the Commission should not move forward with additional auctions until the evaluation of the Pilot is complete. The Energy

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[61] Joint Demand Response Parties Opening Comments to D.17-04-045 at 3.

[62] Advice Letter 5109-E (PG&E), 3095-E (SDG&E), and 3629-E (SCE).

[63] PG&E Reply Comments to D.17-04-045, July 17, 2017 at 2.

[64] PG&E Opening Comments at 2 and Reply Comments at 2.

[65] Joint Demand Response Parties Opening Comments to D.17-04-045, July 6, 2017 at 4-5.

Division will include a discussion of this information as part of its evaluation of the Pilot.

Parties also respond to the Joint Demand Response Parties and OhmConnect's contention that a 2018 solicitation would provide a "glide path" to the 1 gigawatt demand response procured through the permanent auction mechanism, if adopted by the Commission.[66] ORA correctly clarifies that the Commission does not consider the 1 gigawatt figure to be a procurement target. ORA explains that the Commission reasoned that the size of the mechanism should be flexible based on the competitiveness of the bids received and capped the annual procurement at 1 gigawatt.[67] In reply, the Joint Demand Response Parties continue to argue that the Commission has determined that the parameters of the demand response auction mechanism state that the mechanism is the primary means of soliciting demand response and the 1 gigawatt figure is the ceiling.[68] However, the parameters adopted in D.16-09-056, including the 1 gigawatt figure, are contingent upon approval by the Commission of a transition from pilot status.[69] Until the completion of the Pilot evaluation, and a determination by the Commission of whether to adopt the auction mechanism as permanent, the parameters adopted in D.16-09-056 will not be implemented.

The theme throughout this Decision is balancing competing objectives. We continue this theme by balancing the objectives of the Pilot with the

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[66] Joint Demand Response Parties Opening Comments to D.17-04-045, July 6, 2017 at 5 and OhmConnect Opening Comments to D.17-04-045, July 6, 2017 at 2.

[67] ORA Reply Comments to D.17-04-045, July 6, 2017 at 2.

[68] Joint Demand Response Parties Reply Comments to D.17-04-045, July 17, 2017 at 5.

[69] D.16-09-056 at Ordering Paragraph 12.

principles of demand response. The Commission pursued the Pilot to gain experience in the CAISO market and to investigate whether a competitive procurement mechanism for supply side resources outside of traditional utility programs is viable. In D.16-06-029 and again in D.16-09-056, the Commission stated that until a review of the Pilot's delivery performance results can occur, the Commission cannot consider the Pilot's full merits.

This Decision declines to approve an additional Pilot auction for 2018. The record indicates that there are multiple opportunities for demand response providers to bid on procurement contracts, not only in the demand response portfolios and the demand response auction mechanism solicitations but also other Request for Offers solicitations external to demand response. Furthermore, the Commission is troubled by the strength and competitiveness of the market, given the contents of the Independent Evaluator's report. With respect to the Joint Demand Response Parties' apprehension about the demand response auction mechanism procuring 1 gigawatt, interested persons are reminded that the Pilot is in the process of being evaluated. Again, if the evaluation provides evidence that the parameters adopted in D.16-09-056 are not appropriate, the Commission could reconsider those parameters.

2.3. Next Steps for Demand Response: Resolving Barriers to CAISO Integration and Developing New Models of Demand Response

As further described below, this Decision establishes two new working groups, the Supply Side Working Group and the Load Consumption Working group, and creates a set of tasks for each. The Supply Side Working Group will develop and refine implementable proposals, for the Commission's consideration, to address certain remaining barriers to integrating demand response into the CAISO market. The Load Consumption Working Group will develop proposals for specific foundational elements of new models of demand response necessary before launching new models. The Supply Side Working Group is responsible for accomplishing the tasks as described below and providing quarterly status reports to the service list. The Utilities, on behalf of the Load Consumption Working Group, shall develop a report on its proposals, which will inform a new rulemaking for developing new models of demand response. Nothing in this Decision proscribes the Commission from opening a new rulemaking prior to either working group completing the tasks described herein.

Rulemaking 13-09-011 is closed; the issues in phases one through three have been addressed and the issue of new models of demand response are not ripe at this time but will be addressed in the future rulemaking.

2.3.1. Barriers to Integration and New Models of Demand Response Background

D.16-09-056 explained that the results of the Potential Study would be submitted in two phases with the second phase, focused on newer models of demand response, to be delivered in October 2016. D.16-09-056 also anticipated that a decision focused on new and advanced demand response programs would be developed following the issuance of the second phase of the Potential Study.

The second phase of the Potential Study was issued in March 2017. Prior to its issuance, the Consultants provided a draft report to parties on November 14, 2016, which was followed by a workshop on November 30, 2016. A subsequent webinar on December 9, 2016 gave parties an additional opportunity to ask technical questions about the Potential Study. A December 15, 2016 Ruling posed several questions to parties regarding the results of the draft report of the Potential Study and the recommendations for new models of demand response. Parties filed responses to the questions on

January 16, 2017 and reply comments to those responses on January 31, 2017. The results of the second phase of the Potential Study indicate that, with the increased use of renewable generation and mandates to meet a 50 percent renewables by 2030, the potential value for traditional peak-shedding system demand response will be reduced.[70] The Potential Study results conclude that there are opportunities for shed demand response to provide value to the grid as local capacity,[71] but suggest that in place of system shed there will be a necessity to focus on local and distribution system needs and advanced demand response products that can either shift load from times of high demand to times when there is a surplus of renewable generation, or can use loads to dynamically adjust demand on the system at timescales ranging from seconds up to an hour.[72]

Prior to the release of the Potential Study, a workshop was held to discuss demand response program outcomes from 2016. During this workshop, parties addressed the concerns regarding remaining barriers to CAISO integration. Parties developed the following list of remaining barriers:

- CAISO Settlement;
- Click-Through Process;
- Mismatched Supply Plans;
- Incorporating or valuing unintegrated demand response megawatts;
- Changes to Commission and CAISO baselines;
- Resource adequacy issues; and

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[70] Potential Study at 1-8. 5-27. Shed resources provide the conventional form of demand response by which load is reduced to lower peak demands in the grid.

[71] *Id*. at 5-28.

[72] *Id*. at 1-1 through 1-11.

- Improved wholesale market participant (Community Choice Aggregators/Load Serving Entities) education.

During a workshop on April 4, 2017, parties continued to discuss CAISO integration barriers, further explored the results of the Potential Study, and identified policy issues surrounding new models of demand response including: barriers to adoption of new demand response models, the role of the demand response Potential Study, and the current and future coordination needs among proceedings that address various issues related to demand response.

On May 22, 2017, a Ruling was issued asking parties to respond to questions regarding the steps to be taken before launching new models of demand response. The Ruling referenced the list of barriers from the February workshop as well as the following list of activities that the parties recommend the Commission should accomplish before launching new models of demand response:

1. The Commission should undertake several activities related to the resource adequacy proceeding including:
   a) Identification of the value of new products and determination of customer appeal;
   b) Consideration of a policy that pays capacity value for ramping;
   c) Resolution of local resource adequacy requirements for demand response; and,
   d) Review of qualifying capacity requirement for weather-sensitive demand response.
2. Define and develop new products including both load consumption and bi-directional products.

3. Resolve dual-participation issues including defining and addressing barriers.
4. Align retail and wholesale baselines and diversify the baselines by customer and load.
5. Coordinate the efforts of CAISO and the Commission to integrate demand response into the CAISO market, including new models of demand response.
6. Create and implement more accurate dynamic price signals tied to wholesale pricing.
7. Define and clarify jurisdiction regarding Community Choice Aggregation.
8. Consider and adopt consistent time-of-use periods with demand response and rate design.
9. Resolve remaining issues with CAISO integration of Shed demand response.
10. Develop characteristics and values of demand response for distribution system.
11. Develop and define data access rules to enable new demand response models.
12. Consider multi-year procurement demand response contracts.

The CAISO, CESA, CLECA, California Solar Energy Institute Association, Joint Demand Response Parties, NRG, OhmConnect, ORA, PG&E, SDG&E, SCE and Tesla responded to the questions in the Ruling.

2.3.2. Establishment of Supply Side Working Group and Load Consumption Working Group

This Decision establishes two working groups, the Supply Side Working Group and the Load Consumption Working Group, and assigns a task list for each, as described herein. The purpose of the Supply Side Working Group is to address specific remaining barriers to integrating demand response into the CAISO market. The barriers to be resolved are compiled from those barriers identified in the February 2017 and April 4, 2017 workshops and additional barriers identified in the responses to the May 22, 2017 Ruling. The compiled list of barriers to be resolved by the Supply Side Working Group is presented in Table 1 below. The purpose of the Load Consumption Working Group is to develop a proposal for foundational elements of new models of demand response. The Load Consumption Working Group should accomplish the tasks as indicated in Table 2 below.

In addition to addressing the tasks, both working groups shall provide the parties to this proceeding with status reports. On a quarterly basis, beginning on January 15, 2018, the Utilities, on behalf of the Supply Side Working Group and Load Consumption Working Group, shall serve a status report to the service list in this proceeding describing the activities of each group and the tasks accomplished. No later than January 31, 2019, the Utilities, on behalf of the Load Consumption Working Group, shall serve a final report to include proposals on its assigned tasks. The report will inform the future rulemaking to consider the development of new models of demand response.

2.3.2.1. Supply Side Working Group Tasks Addressing Barriers to Integration

Over the course of two workshops, parties identified several remaining barriers to CAISO integration. This Decision recognizes that these barriers continue to exist. In comments, the CAISO states that the seven items identified during the February 2017 workshop are barriers to *further* integrating demand response into the CAISO market and highlights that significant amounts of demand response are already integrated and functioning.[73] However, before

[73] CAISO Opening Comments on Remaining Barriers and New Models, July 6, 2017 at 1.

launching new models of demand response, which will also be integrated into the market, this Decision determines that the Commission should adopt approaches to combatting the specific barriers addressed in the February and April 2017 workshops as well as those discussed in comments. This Decision assigns the Supply Side Working Group the task of developing proposals to resolve several of these barriers, as further discussed below. Acknowledging that certain barriers are currently being considered in other proceedings, this Decision also examines these barriers to ensure any necessary coordination with this proceeding.

This Decision begins with the issue of CAISO settlements, which is considered to be a top priority by the CAISO, Joint Demand Response Parties, PG&E, and Southern California Edison. Explaining that all issues identified in a comprehensive review of 2015-2016 market activities have been corrected, the CAISO claims that "corrected settlements will occur at the next available settlement recalculation" and all corrected trades will be resettled by October 2017.[74] No party contested this statement. Those identifying this issue as a priority convey that using the current CAISO stakeholder process is the best approach to addressing this issue.

Because the settlement issue should be resolved by October 2017, this Decision takes no action on this issue and considers the CAISO stakeholder process to be the appropriate venue to complete its resolution. However, to ensure the Commission is kept abreast of any remaining or new issues related to

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[74] *Id.* At 2.

settlements, the Supply Side Working Group's quarterly status report shall include a brief overview of all activities related to CAISO settlements.

Several parties suggest that resource adequacy issues should be near the top of the Commission's priority list of barriers to address.[75] Parties expanded upon the issue of resource adequacy in comments to the May 22, 2017 Ruling and specified the following specific issues: the resolution of local resource adequacy requirement for demand response, qualifying capacity requirements for weather-sensitive demand response, and multi-year procurement demand response contracts. Several parties state that resource adequacy issues should be addressed in the resource adequacy proceeding.[76] CLECA contends that some resource adequacy issues, *i.e.,* weather sensitive qualifying capacity, may require action by the CAISO and cannot be resolved in terms of the resource adequacy proceeding alone.[77] However, PG&E underscores that D.17-06-027 calls for the establishment of several working groups including one for weather-sensitive

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[75] CAISO Opening Comments on Remaining Barriers and New Models, July 6, 2017 at 1, CLECA Opening Comments on Remaining Barriers and New Models, July 6, 2017 at 8, NRG Opening Comments on Remaining Barriers and New Models, July 6, 2017 at 3, PG&E Opening Comments on Remaining Barriers and New Models, July 6, 2017 at 2-3, SDG&E Opening Comments on Remaining Barriers and New Models, July 6, 2017 at 2, and SCE Opening Comments on Remaining Barriers and New Models, July 6, 2017 at 2-3.

[76] CAISO Opening Comments on Remaining Barriers and New Models, July 6, 2017 at 4-6, CLECA Opening Comments on Remaining Barriers and New Models, July 6, 2017 at 13; Joint Demand Response Parties Opening Comments on Remaining Barriers and New Models, July 6, 2017 at 10; NRG Opening Comments on Remaining Barriers and New Models, July 6, 2017 at 2 and 6, ORA Opening Comments on Remaining Barriers and New Models, July 6, 2017 at 4, PG&E Opening Comments on Remaining Barriers and New Models, July 6, 2017 at 11; SDG&E Opening Comments on Remaining Barriers and New Models, July 6, 2017 at 2 and 6; and SCE Opening Comments on Remaining Barriers and New Models, July 6, 2017 at 2 and 9.

[77] CLECA Opening Comments on Remaining Barriers and New Models, July 6, 2017 at 13.

demand response.[78] Throughout the life of this proceeding, the Commission has stated that resource adequacy policies will be determined in the resource adequacy rulemaking. This Decision finds that the issues of the resolution of local resource adequacy requirement for demand response, qualifying capacity requirements for weather-sensitive demand response, and multi-year procurement demand response contracts are more appropriately addressed in the resource adequacy proceeding. However, for the purposes of transparency and coordination efforts, the Supply Side Working Group should provide updates on the resource adequacy efforts through the quarterly reports. This task will be added to the Supply Side Working Group Task List in Table 1 below.

In regard to the issue of baselines, parties discussed an existing stakeholder process, the CAISO's Energy Storage and Distributed Energy Resources (ESDER II), but note that a separate Commission process and decision must take place to incorporate baseline changes into the Commission's retail programs.[79] In its comments, the CAISO states that it will seek approval from its Board of Governors on July 26, 2017 to file new demand response settlement baselines (developed through the ESDER II) with the Federal Energy Regulatory Commission (FERC). The CAISO recommends the Commission explore whether and how utility demand response program baselines should align with the expanded CAISO baseline options available if and when approved by the FERC.[80] This issue is in the scope of the current demand response portfolio

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[78] PG&E Opening Comments on Remaining Barriers and New Models, July 6, 2017 at 11.

[79] Joint Demand Response Parties Opening Comments on Remaining Barriers and New Models, July 6, 2017 at 2.

[80] CAISO Opening Comments on Remaining Barriers and New Models, July 6, 2017 at 3.

applications for 2018-2022, Application (A.) 17-01-012 et al. As such, the issue of adopting revised baselines should be considered in that proceeding. Furthermore, it is possible that a post-2017 determination by the FERC may require a Commission determination. This Decision directs that, if further modification of baselines is necessary as a result of a FERC determination following the approval of a decision in A.17-01-012 et al., the Supply Side Working Group should file a petition for modification of the decision in the current demand response portfolio application, A.17-01-012 et al.

Parties addressed several CAISO technical requirements that continue to create barriers to integration. The Utilities and the Joint Demand Response Parties maintain that the issue of incorporating or valuing un-integrated demand response megawatts should be a medium to high-priority issue for the Commission.[81] PG&E explains that there are CAISO requirements that preclude certain customers from being included in a resource and while these requirements do not prevent integration, it may result in less megawatts being integrated.[82] Recognizing that the barrier is related to CAISO requirements, PG&E recommends a different process for each of the three specific barriers it identifies: 1) a stakeholder process at the CAISO to address minimum size requirements; 2) a stakeholder proposal to the CAISO to require new market participants to register in order to address the problem of load serving entities

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[81] Joint Demand Response Parties Opening Comments on Remaining Barriers and New Models, July 6, 2017 at 2; PG&E Opening Comments on Remaining Barriers and New Models, July 6, 2017 at 2-3, SDG&E Opening Comments on Remaining Barriers and New Models, July 6, 2017 at 2, and SCE Opening Comments on Remaining Barriers and New Models, July 6, 2017 at 2.

[82] PG&E Opening Comments on Remaining Barriers and New Models, July 6, 2017 at 2-3.

not registered; and 3) a Commission-facilitated working group to investigate less costly technologies to address the expensive telemetry requirement for resources greater than 10 megawatts.[83] PG&E, CLECA and SCE identify several additional technical barriers to CAISO integration including uncertainties over minimum run times, maximum run hours, partial de-rate options, reliability demand response resource day ahead bidding options, the need for additional resource parameters on CAISO Resource Data Templates, and others.[84] The Joint Demand Response Parties suggest a working group to address and resolve the issues. SCE recommends a new phase of the proceeding to identify issues and proposals, along with workshops.

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[83] *Ibid*.

[84] CLECA Opening Comments on Remaining Barriers and New Models, July 6, 2017 at 2-7. PG&E Opening Comments on Remaining Barriers and New Models, July 6, 2017 at 3, and SCE Opening Comments on Remaining Barriers and New Models, July 6, 2017 at 2.

As highlighted by PG&E, these technical barriers relate to CAISO requirements and therefore should be resolved through a CAISO-led working group. Because integrating demand response into the CAISO market is a high priority to the Commission, a Commission-facilitated working group is appropriate. The Supply Side Working Group is assigned the task of working with the CAISO to address the three barriers as stated by PG&E above, the additional technical barriers identified above, and others the working group identifies. The required quarterly reports shall include a status report on efforts to resolve these technical barriers. We note that these issues are not new and, therefore, do not require a new phase of this proceeding as recommended by SCE. Furthermore, this Decision reiterates that assigning the working group the task of addressing these issues in no way indicates a change in Commission policy established in D.15-11-042, whereby the Utilities shall only attribute capacity value to demand response programs that are integrated into the CAISO wholesale market or embedded in the California Energy Commission's unmanaged/base case load forecast.

In addition to the technical barriers previously discussed, parties contend that dual participation rules also create barriers to integration. Dual participation issues are of two varieties: CAISO-related and Commission-related. For dual participation issues needing a CAISO determination, *i.e.,* each registration in the CAISO can only have one load serving entity, the CAISO has a stakeholder process in place. Interested persons may use the Supply Side Working Group to develop demand response related recommendations to take to the CAISO stakeholder process. The quarterly report shall include a brief overview of these efforts. The other variety of dual participation issues falls under the Commission's jurisdiction and involves fairness, *i.e.,* comparable dual participation rules for utility-administered demand response programs and third-party demand response programs. This issue is currently in scope in the demand response application proceeding, A.17-01-012 et al., and should be considered within that proceeding.

The issue of mismatched supply plans has not been thoroughly defined in the record of this proceeding. In comments, the Joint Demand Response Parties, PG&E, and SCE raise this issue as a priority.[85] PG&E contends the timing of supply plans for resource adequacy valuation impacts demand response providers, their scheduling coordinators and load serving entities. Furthermore, PG&E cautions that the increase of non-utility providers such as Community Choice Aggregators will lead to more mismatched supply plans.[86] Joint Demand Response Parties recommend a "working group process be initiated to address which plans govern and the applicable dispute resolution process."[87] SCE recommends a CAISO stakeholder process while PG&E suggests a Commission-led working group to inform the resource adequacy proceeding. This Decision determines that it is appropriate to assign the Supply Side Working Group to address this barrier. The working group should further define this barrier and develop proposals to be make available to the CAISO stakeholder process and resource adequacy proceeding.

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[85] Joint Demand Response Parties Opening Comments on Remaining Barriers and New Models, July 6, 2017 at 2, PG&E Opening Comments on Remaining Barriers and New Models, July 6, 2017 at 2, and SCE Opening Comments on Remaining Barriers and New Models, July 6, 2017 at 3.

[86] PG&E Opening Comments on Remaining Barriers and New Models, July 6, 2017 at 2.

[87] Joint Demand Response Parties Opening Comments on Remaining Barriers and New Models, July 6, 2017 at 2.

Joint Demand Response Parties, PG&E and SCE consider the issue of the Click-Through Process authorization to be a priority for the Commission. Joint Demand Response Parties and SCE recommend that the issue be addressed through a working group process, while PG&E suggests continuing the use of the ongoing Rule 24 proceeding. The Rule 24 proceeding is not an active proceeding: the initial policies were adopted in R.07-01-041, which was closed in 2012, and the Commission considered rate recovery for implementing Rule 24 in A.14-06-001et al., which has also been closed. Furthermore, several advice letters were filed on January 3, 2017 requesting approval for implementation of the click-through process; these have been approved by the Commission through Resolution E-4868, which ordered additional implementation processes, Advice Letter filings, and the filing of an application. Hence, this Decision finds the issue of the Click-Through process authorization will be addressed through these procedural venues.

Only three parties address the issue of improving wholesale market participant education. Joint Demand Response Parties suggests a joint CAISO and Commission working group be initiated to address needed improvements. OhmConnect recommends the CAISO develop an issue paper and hold a workshop on this issue. This issue overlaps with the issue of new market participant registration addressed above. As previously stated in this Decision, the issues regarding market participants relates to CAISO requirements and should be addressed through a CAISO led working group. However, because integrating demand response into the CAISO market is a high priority to the Commission, a Commission-facilitated working group is also appropriate. Hence, we add this issue to the task list for the Supply Side Working Group. The quarterly reports shall include an overview of the activity, any action taken by the CAISO, any need for Commission consideration, and any resolution.

During the workshops and/or in response to the May 22, 2017 Ruling, parties discussed activities related to demand response: a) dynamic pricing signals, b) Community Choice Aggregator and direct access provider issues; c) time-of-use issues; and d) demand response for distribution system. As further explained below, the Commission is either currently exploring or plans to explore these activities in other proceedings.

The Utilities, Joint Demand Response Parties, and CLECA each address whether to pilot dynamic pricing signals, with PG&E, SCE, and the Joint Demand Response Parties stating that this issue could be addressed in general rate cases, rate design windows, or R.14-08-013 (the Distribution Resources Plan proceeding).[88] CLECA contends there is not obvious venue for such a pilot and suggests holding a workshop.[89] SDG&E maintains they already have multiple rates to provide dynamic price signals to customers but suggest that dynamic price signals tie to wholesale pricing for Community Choice Aggregators and direct access providers could be piloted in this proceeding.[90] This Decision determines that creating and implementing more accurate dynamic pricing signals should be addressed in utilities' general rate cases

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[88] Joint Demand Response Parties Opening Comments on Remaining Barriers and New Models, July 6, 2017 at 10, PG&E Opening Comments on Remaining Barriers and New Models, July 6, 2017 at 12, and SCE Opening Comments on Remaining Barriers and New Models, July 6, 2017 at 10.

[89] CLECA Opening Comments on Remaining Barriers and New Models, July 6, 2017 at 14.

[90] SDG&E Opening Comments on Remaining Barriers and New Models, July 6, 2017 at 7.

and/or rate design windows in order to ensure that the signals are part of rate design.

With respect to issues specific to Community Choice Aggregators and direct access providers, SDG&E contends the Commission should consider these issues in R.13-09-011.[91] The Commission recently opened one rulemaking to address modifications to the Power Charge Indifference Amount and is considering whether to open an additional rulemaking on policies for Community Choice Aggregator and direct access providers. Issues related to Community Choice Aggregator or direct access providers may be more appropriately addressed in a future rulemaking.

Similar to dynamic pricing pilots, the Utilities suggest that the consideration and adoption of consistent time-of-use periods should be addressed in the general rate cases or rate design window proceedings.[92] Furthermore, SCE describes several current time-of-use activities and contends that introducing a new proceeding to address Shift and Shed rate structures would only complicate matters.[93] Because time-of-use periods are currently being addressed in general rate cases and rate design windows, it would be duplicative to address the same issues in this proceeding. Furthermore, coordination efforts between two or, even, three proceedings could further complicate achieving consistency. Hence, this Decision finds that the most appropriate place to consider consistent time-of-use periods is in the general rate

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91 *Ibid.*

92 PG&E Opening Comments on Remaining Barriers and New Models, July 6, 2017 at 12-13, SDG&E Opening Comments on Remaining Barriers and New Models, July 6, 2017 at 7, and SCE Opening Comments on Remaining Barriers and New Models, July 6, 2017 at 10-11.

cases and rate design window proceedings. The development of characteristics and values of demand response for distribution system is currently being addressed in the Integrated Distributed Energy Resources and Distribution Resources Plan proceedings and will not be addressed in this proceeding.[94]

2.3.2.2. Load Consumption Working Group Tasks

This Decision now turns to the activities that parties identified as related to new models of demand response, which include: identify the value of new products and determination of customer appeal; consider a policy that pays capacity value for ramping; define and develop new products;[95] coordinate the efforts of CAISO and the Commission to integrate new models of demand response into the CAISO market; and develop and define data access rules to enable new demand response models. This Decision recognizes that the Commission must undertake several activities before launching new models of demand response but should move forward on the development of these foundational elements. The Load Consumption Working Group is hereby established and is tasked with developing proposals for each of these foundational activities. To ensure transparency, the Load consumption Working Group shall serve quarterly reports on the status of the group's work. A final report including all of the proposals shall be served no later than January 31, 2019 and may inform a future rulemaking on new models of demand response. The working group is not expected to resolve every issue thoroughly.

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[93] SDG&E Opening Comments on Remaining Barriers and New Models, July 6, 2017 at 11.

[94] R.1410003, Amended Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge, September 1, 2016 at 3-4.

[95] Including both load consumption and bi-directional products.

Rather, the working group is tasked with developing a proposal for a foundation that the Commission can use to inform the rulemaking to adopt policies and designs for new models of demand response. Again, nothing in this Decision precludes the Commission from opening the rulemaking prior to the completion of the Load Consumption Working Group's final report.

With respect to the New Models Foundational activities, parties generally agree that working groups are the best approach to addressing these issues, especially the issues of defining and developing new products including load consumption and bi-directional products and coordinating the efforts of CAISO and the Commission to integrate new models into the CAISO market. CALSEIA and TESLA further suggest that an outside facilitator could be valuable for obtaining new perspectives.[96] This Decision sees merit in utilizing an outside facilitator with experience in organizing working groups, in addition to technical experience. PG&E, SDG&E, and SCE are directed to hire an experienced facilitator, with input from the Energy Division. Load Consumption Working Group meetings should begin no later than January 31, 2018. Furthermore, as recommended by several parties, the Load Consumption Working Group should coordinate its efforts with CAISO efforts. Finally, Energy Division is designated as having an oversight role in the Load Consumption Working Group.

In regard to the identification of the value of new products and consideration of a policy that pays capacity value for ramping, some parties argued that the working group should be in the resource adequacy proceeding. As discussed previously, all resource adequacy-related issues will be determined

[96] CALSEIA Opening Comments on Remaining Barriers and New Models, July 6, 2017 at 6 and Tesla Opening Comments on Remaining Barriers and New Models, July 6, 2017 at 7.

in the resource adequacy proceeding. However, given the importance of these issues, this Decision finds it appropriate for the Load Consumption Working Group to develop a proposal on these issues and submit the final proposal simultaneously to the service list of this proceeding and the resource adequacy proceeding.

Parties presented a spectrum of views as to whether the Commission should address the issue of developing and defining data access rules to enable new demand response models in this proceeding or at all. PG&E argues that a framework already exists for third-party providers to obtain customer usage information through the Rule 24 process and the "Share My Data" platform. SDG&E contends that data issues are best addressed in a proceeding that encompasses all distributed energy resources. Joint Demand Response Parties and OhmConnect provide a list of issues that should be addressed. SCE contends that data access may not be an issue that needs to be resolved prior to implementing new models of demand response.

This Decision first finds that the data access issues listed by Joint Demand Response Parties and OhmConnect, including the matter of the click-through process, are already being addressed in other venues and relate to current models of demand response. Furthermore, determinations made regarding data access issues related to new models of demand response in no way impacts implementation of the click-through solutions previously discussed in this Decision.

With respect to new models of demand response, data access should be addressed uniformly across all distributed energy resources and is therefore more appropriately addressed in R.14-08-013, the Distribution Resource Plans proceeding. However, based upon the experience in this proceeding with respect to data access, it is important the Commission pursue the development of a list of potential data access issues that the Commission should consider before implementing new models. Hence, the Load Consumption Working Group should identify data access issues to address prior to the launching of new models of demand response and serve that set of issues simultaneously to the service list of this proceeding and to R.14-08-013.

2.3.2.3. Working Group Tasks

The tasks assigned to the Supply Side Working Group are presented in Table 1 and the tasks assigned to the Load Consumption Working Group are presented in Table 2. Quarterly reports shall be served on the service list of R.13-09-011 beginning January 15, 2018 and thereafter on April 15, July 15, October 15, and January 15, until the final report is served on January 31, 2019 for the Load Consumption Working Group and June 30, 2019 for the Supply Side Working Group.

TABLE 1 **Supply Side Working Group Tasks**
Provide status reports of CAISO Settlement Issues Addressed in CAISO Stakeholder Meetings.
Provide status report of Resource Adequacy Issues Addressed in Resource Adequacy Proceedings.
Provide status report of work with the CAISO to Address technical barriers to integration: i) minimum size requirements, ii) registration of new market participants, iii) less expensive telemetry requirements.
Develop proposals to address mismatched supply plans and provide to the CAISO stakeholder process and the resource adequacy proceeding prior to June 30, 2019.
Improve Wholesale Market Participant Education.
Develop proposal to address local resource adequacy, weather-sensitive demand response qualifying capacity requirements, and multi-year procurement contracts. Provide to resource adequacy proceeding prior to June 30, 2019.
Develop proposal in reaction to any CAISO adoption of new baselines. This could be the basis for a petition for modification in A.17-01-012 et al., if applicable.
Develop stakeholder positions for CAISO dual participation rules to provide to the CAISO.

TABLE 2 **Load Consumption Working Group Tasks**
Development of a proposal that defines new load consumption and bi-directional products.
Development of a proposal of whether and how to pay a capacity value for ramping to provide to the resource adequacy proceeding prior to January 31, 2019.
Development of a proposal on how to better coordinate the efforts of the CAISO and the Commission to integrate new models of demand response.
Development of a proposal to identify the value of new products to provide to resource adequacy proceeding prior to January 31, 2019.

3. Comments on Proposed Decision

The proposed decision of the Administrative Law Judges in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed by __________ on _________, and reply comments were filed by __________ on _________.

4. Assignment of Proceeding

Martha Guzman Aceves is the assigned Commissioner and Kelly A. Hymes and Nilgun Atamturk are the assigned Administrative Law Judges in this proceeding.

Findings of Fact

1. The multiple-step process proposed by the Utilities is inefficient and unnecessary.

2. A one-step assessment of whether a Competing Provider's demand response program is similar provides the necessary transparency required by the demand response principles and is efficient.

3. The definition of a similar program is determined in this Decision.

4. The Utilities and other interested persons will be afforded an opportunity to be heard by submitting written input in the Advice Letter process.

5. The Commission will have the final determination of the Competing Provider's Advice Letter through a Tier Three process.

6. Using a Tier Three Advice Letter process balances expediency, transparency, and the appropriate level of regulatory oversight.

7. Defining the customer type and providing the approximate number of customers to whom the demand response program is marketed in the Tier Three Advice Letter will allow the Commission to ensure that a large group of customers are not omitted from demand response opportunities.

8. A similar program requires that the customer type and approximate number of customers marketed to are alike in substance or essentials.

9. It is redundant to require a similar demand response program to adhere to the same environmental requirements in Public Utilities Code Section 454.52.

10. Requiring resource adequacy reporting for determining whether a demand response program is similar is redundant to reporting efforts in the resource adequacy proceeding.

11. The Commission has determined that fossil-fueled back-up generation is antithetical to the efforts of the Commission's Energy Action Plan and the Loading Order.

12. The Commission adopted a demand response principle to protect customer choice.

13. The Commission wants to ensure that third-party entities (e.g., demand response providers and aggregators) have a level playing field in order to increase customer choice and competition.

14. Requiring the Competing Provider to include, in its Advice Letter, the name of the Competing Utility, the Competing Utility's demand response program(s) similar to the Competing Provider's proposed program, and an explanation of how the program's similarities comply with this Decision should accelerate the staff analysis of the Advice Letter and lead to an expedient regulatory process.

15. The Competitive Neutrality Cost Causation implementation time begins with the determination of whether a proposed program is similar.

16. The required 30-day letter in Step Three of the implementation process should assist in customer education of the implementation process and alleviate customer confusion of the bill credit.

17. The Commission is embarking on new territory with the implementation of the Competitive Neutrality Cost Causation Principle.

18. It is prudent to review the implementation process to ensure the process and the principle are achieving the intent of the Commission.

19. Demand response providers have had several business opportunities to bid on contracts for deliveries in 2019.

20. The one-year demand response auction mechanism pilot budget and solicitation divided over two years of delivery did not lead to flat growth in capacity procured as indicated by the Utilities' Advice Letters.

21. There is no need for additional resource adequacy in PG&E's territory in 2019.

22. The Independent Evaluator's Report on the 2017 Demand Response Auction Mechanism solicitation found significant consolidation in the market.

23. The 1 gigawatt figure adopted by the Commission in D.16-09-056 is not a procurement target.

24. The parameters adopted in D.16-09-056, including the 1 gigawatt cap, are contingent upon approval by the Commission of a transition from pilot status.

25. Barriers to integrating current models of demand response into the CAISO market continue to exist.

26. The barrier of CAISO Settlements should be resolved by October 2017.

27. The CAISO stakeholder process is the appropriate venue to address the CAISO Settlement barrier.

28. The issue of new baselines for demand response is in the scope of the current demand response portfolio applications for 2018-2022.

29. Incorporating or valuing un-integrated demand response megawatts relates to CAISO requirements and should be addressed in a CAISO led working group.

30. The issues of incorporating or valuing un-integrated demand response megawatts are not new issues and do not require a new phase of this proceeding.

31. Assigning a working group the task of addressing these issues in no way indicates a change in Commission policy, whereby the Utilities shall only attribute capacity value to demand response programs that are integrated into the CAISO market or embedded in the California Energy Commission's unmanaged/base case load forecast.

32. The issue of mismatched supply plans requires further definition.

33. The Rule 24 proceeding is not an active proceeding as it was closed in 2012.

34. Application 14-06-001 et al, which addressed rate recovery for implementing Rule 24, is closed.

35. Advice Letters implementing the click-through authorization process were filed on January 3, 2017 and approved by Resolution E-4868.

36. The issue of the click-through process should be closed once a resolution addressing the advice letters is considered by the Commission.

37. The issue of market participant education relates to CAISO requirements and should be addressed through a CAISO stakeholder process.

38. Because integrating demand response into the CAISO market is a high priority to the Commission, it is reasonable to allow a Commission-facilitated working group to address the issue of market participant education.

39. Remaining technical barriers to CAISO market integration should be discussed in the Supply Side Working Group to form recommendations to the CAISO.

40. The Commission should undertake several activities before launching new models of demand response but move forward on developing the foundational elements.

41. The Commission should assign the relevant activities to the Load Consumption Working Group to develop proposals on foundation elements that the Commission could use to inform a new rulemaking.

42. In order to ensure that dynamic pricing signals are part of rate design, creating and implementing more accurate signals is best addressed in general rate cases and/or rate design windows proceedings.

43. Time-of-use periods are currently being addressed in general rate cases and rate design windows.

44. It would be duplicative to address time-of-use periods in this proceeding.

45. The development of characteristics and values of demand response for distribution system is being addressed in the Integrated Distributed Energy Resources and Distribution Plan proceedings.

46. The CAISO has a stakeholder process in place for addressing CAISO dual participation rules.

47. Comparable dual participation rules for utility-administered demand response programs and third-party demand response programs are in the scope of A.17-01-012 et al.

48. Data access issues are being addressed in other regulatory venues or other Commission proceedings.

49. Data access issues should be addressed uniformly across all distributed energy resources and is more appropriately addressed in R.14-08-013.

Conclusions of Law

1. The Commission should adopt a Tier Three Advice Letter Process to determine whether a Competing Provider's demand response program is similar to a Competing Utility's demand response program.

2. The Commission should require that the type of customer and approximate number of customers marketed to in the Competing Provider's program should be similar to the Competing Utility program's customer type and approximate number of unbundled customers to which the Competing Utility markets.

3. Pub. Util. Code § 454.52 requires all load serving entities to file an integrated resource plan to ensure that the load serving entities meet greenhouse gas emissions reduction targets, procure 50 percent eligible renewable energy resources by 2030, enhance demand-side management and minimize local pollutants.

4. All load serving entities are required to comply with resource adequacy requirements, including reporting.

5. For the purposes of determining the impact of the Competitive Neutrality Cost Causation Principle's implementation, the Commission should require a Competing Provider to provide ex ante and ex post load impacts.

6. The Commission should require a similar program to demonstrate that it will not use a prohibited resource to enable load shed during demand response events.

7. The Commission should require a similar program to allow for third-party participation if the competing utility's program also allows for third-party provider's participation.

8. The Commission should require a Competing Provider to include, in its Advice Letter, the name of the Competing Utility, the Competing Utility's

demand response program(s) similar to the Competing Provider's proposed program, the Competing Utility's ex-ante load impacts for its program from the previous year's Load Impact Report protocol filing, and an explanation of how the Competing Provider's program similarities comply with this Decision.

9. The Commission should require the use of the bill credit on unbundled customers no longer eligible to participate in a Competing Utility's similar demand response program.

10. The Commission should require the Utilities to undertake a process, with input from parties, to develop and propose a method to determine the bill credit.

11. The Director of the Commission's Energy Division should be authorized to issue a report on the Competitive Neutrality Cost Causation Principle's implementation process and any unintended consequences.

12. The Commission should not move forward with additional auctions until the evaluation of the demand response auction mechanism pilot is complete.

13. The Commission should adopt appropriate approaches to combatting barriers addressed in this Decision before launching new models of demand response.

14. The Commission should establish a Supply Side Working Group to address barriers to the integration of demand response into the CAISO market.

15. Resource adequacy related barriers will be addressed in the resource adequacy proceeding.

16. The issue of adopting revised baselines should be considered in A.17-01-012 et al.

17. The Commission should establish a Load Consumption Working Group to develop proposals for foundational elements that the Commission may use to

inform a new rulemaking to adopt policies and designs for new models of demand response.

O R D E R

IT IS ORDERED that:

1. The four-step process outlined in Attachment 1 of this Decision is adopted to implement the Commission's Competitive Neutrality Cost Causation Principle.

2. A Community Choice Aggregator or Direct Access Provider's (Competing Provider) demand response program is considered similar to a program provided by an investor-owned utility in the overlapping service area (Competing Utility's program) if the Competing Provider's program meets all of the following requirements:

- is offered to the same type and approximate number of customers, e.g., residential customer;
- is classified as and can be demonstrated to be the same resource, either a load modifying or supply resource, as defined by the Commission;
- can validate that customers are not receiving load shedding incentives for the use of prohibited resources during demand response events; and
- allows the participation of third-party demand response providers or aggregators, if the Competing Utility's program also allows such third-party participation.

3. Within 30 days of the date a Community Choice Aggregator or Direct Access Provider's demand response program is deemed similar by the Commission, Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company shall serve, to parties in Rulemaking 13-09-011, a proposed method for determining the bill credit to

reimburse unbundled customers no longer eligible to participate in the similar demand response program.

4. Within 30 days after serving a proposed method for determining the bill credit to reimburse unbundled customers, Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company shall facilitate a workshop to to discuss the proposed method and develop a consensus proposal. All parties and other interested persons are advised to participate because the final method will be used by the utilities for all future credits for similar demand response programs.

5. Within 15 days after the workshop to discuss the proposed method and develop a consensus proposal, Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company shall submit a Tier Three Advice Letter that either (1) proposes the consensus method or (2) proposes one of the proposed methods but describes all alternatives.

6. The Director of the Commission's Energy Division is authorized to issue a report on the Competitive Neutrality Cost Causation Principle's implementation process and any unintended consequences. The report should address: (1) the implementation process based on information and feedback from Competing Providers (as defined in Attachment 1 of this Decision) on the process adopted in Ordering Paragraph 1; (2) any demand response elements negatively affected by the implementation of the Principle; and (3) recommendations for any changes to address the identified negative impacts. The Competing Provider shall submit all data requested by the Energy Division. The report should be provided to the Commission within 30 months following the adoption of the resolution granting a Competing Provider's demand response program similar status.

7. A Supply Side Working Group is established to discuss and develop proposals to the barriers and activities listed in Table 1 of this Decision. The Supply Side Working Group is responsible for accomplishing the tasks and providing status reports. On a quarterly basis, beginning on January 15, 2018, Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company (the Utilities) shall serve a status report to the service list in this proceeding describing the activities of the group and the tasks accomplished. A final report describing all activities and accomplishments shall be served no later than June 30, 2019. The Commission's Energy Division will oversee the activities of the Supply Side Working Group and the Utilities shall organize and facilitate the working group meetings in consultation with the Energy Division

8. A Load Consumption Working Group is established to discuss and develop proposals to the barriers and activities listed in Table 2 of this Decision. The work in the Load Consumption Working Group should parallel work done in the California Independent System Operator's stakeholder process. The Load Consumption Working Group is responsible for accomplishing the tasks and providing status reports and a final report. On a quarterly basis, beginning on January 15, 2018, Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company (the Utilities), on behalf of the Load Consumption Working Group shall serve a status report to the service list in this proceeding describing the activities of the working group and the tasks accomplished. No later than January 31, 2019, the Utilities, on behalf of the Load Consumption Working Group, shall serve a final report to include final proposals, as described in Table 2. The final report may be used to inform a new rulemaking to develop a foundation for new models of demand response. The

Commission's Energy Division will oversee the activities of the Load Consumption Working Group.

9. Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company (the Utilities) shall hire a working group technical facilitator, in consultation with Energy Division, to organize and facilitate the Load Consumption Working Group. The Utilities may seek cost recovery of the facilitator in the advice letter filing for the 2020 Demand Response Portfolio update. The first meeting of the Load Consumption Working Group shall commence no later than January 31, 2018.

10. Rulemaking13-09-011 is closed

This order is effective today.

Dated _______________________, at Sacramento, California.

Attachment 1

Steps to Implement Competitive Neutrality Cost Causation Principle

Step One:

A Community Choice Aggregator or Direct Access Energy Service Provider (Competing Provider) may file a Tier Three Advice Letter requesting that the Commission determine that the Competing Provider's demand response program is similar to an investor-owned (Competing Utility) program.

Step One A:

The Contents of the Advice Letter shall include: 1) a brief overview of the Competing Provider's proposed demand response program, ex ante load impact for the proposed program, and anticipated start date; 2) customer type description and approximate number of customers to be marketed to; 3) delineation of the proposed program as either a load modifying resource that is embedded in the California Energy Commission's unmanaged/base case load forecast or a supply resource able to be integrated into the California Independent System Operator's wholesale market and ability to demonstrate how the program meets either delineation; 4) description of how the Competing Provider will validate to the Commission that its customers will not receive an incentive for the use of prohibited resources during a demand response event; 5) description of whether the Competing Provider's demand response program will use a third party-aggregator; 6) the name of the competing utility; 7) the Competing Utility's program(s) that the provider considers to be similar and an explanation, pursuant to this Decision, and the Competing Utility's previous year's ex ante load impact for the program(s) as provided in the annual Load Impact Protocol filings.

Step Two:

The Tier Three Advice Letter will include a protest period, staff analysis, and proposed resolution. This process will follow the same process as outlined in the Commission's General Order 96B.

Step Three:

If the outcome of the resolution determines that the Competing Provider's proposed demand response program is similar, the Competing Utility has 30 days from the issuance of the resolution to begin the process to cease cost recovery by and marketing to the Competing Provider's customers of the similar program. By the 60th day, a letter shall be sent to the appropriate customers notifying them of the change. The letter will also explain to customers of the Competing Provider currently enrolled in the Competing Utility's similar demand response program that they will cease to be eligible for that program at the end of the year but will be eligible to participate in the Competing Provider's similar demand response program. No later than 365 days following the issuance of the resolution, the Utility shall complete the changes.

Step Four:

Within one billing cycle following the end of cost recovery and marketing of the similar demand response program by the Competing Utility, affected customers shall receive a bill credit for the similar program(s).

(END OF ATTACHMENT 1)